



December 19, 2001

Ms. Ellen B. Hutchital  
Attorney for Spring Branch I.S.D.  
McGinnis, Lochridge & Kilgore  
3200 One Houston Center  
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Houston, Texas 77010-2009

OR2001-5967

Dear Ms. Hutchital:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 156383.

The Spring Branch Independent School District (the "district"), which you represent, received a request for a statement taken by the district of a named student, or any notes relating to the statement. You claim that the requested information is excepted from disclosure under sections 552.103 and 552.114 of the Government Code and the Federal Education Rights and Privacy Act of 1974 ("FERPA"). We have considered the exceptions you claim and reviewed the submitted information.

Section 552.114 excepts from disclosure student records at an educational institution funded completely or in part by state revenue. Section 552.026 provides as follows:

This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information (other than directory information) contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. *See* 20 U.S.C. § 1232g(b)(1). "Education records" means those records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. *Id.* § 1232g(a)(4)(A). This office generally applies the same analysis under section 552.114 and FERPA. Open Records Decision No. 539 (1990).

In Open Records Decision No. 634 (1995), this office concluded that (1) an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required disclosure by sections 552.026 and 552.101 without the necessity of requesting an attorney general decision as to those exceptions, and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception. However, when you do seek an attorney general decision, you must submit an unredacted copy of the information at issue for our review. Gov't Code § 552.301(e).

In this instance, the requested information is the statement of a specified student. This statement contains information relating to more than one student. Normally, parents have the right to inspect the education records of their child. 20 U.S.C. § 1232g(a)(1)(A). However, a parent of one student does not have the right to inspect the educational records of another student. Because the requestor identified by name a child whose statement was taken by the district, we conclude that redaction of only the personally identifying information from the statement will not serve to protect the privacy rights under FERPA of the student who gave the statement. Therefore, the district is not required to redact the records and may withhold the statement in its entirety. In light of our conclusion under section 552.114 and FERPA, we need not address your argument under section 552.103. *See* Open Records Decision No. 431 at 2-3 (1985) (to the extent that FERPA conflicts with state law, the federal statute prevails).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records

will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Gregory T. Simpson  
Assistant Attorney General  
Open Records Division

GTS/sdk

Ref: ID# 156383

Enc: Submitted documents

c: Mr. Reginald E. McKamie, Sr.  
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(w/o enclosures)